

Report to: Planning Applications Committee

Date: 20 November 2019

Title: Tree Preservation Order (No.3) 2019 – 18 Common Lane, Ditchling [file ref: 3825:0599]

Report of: Specialist Advisor (Arboriculture)

Ward(s): Ditchling & Westmeston

Purpose of report: To report to committee the objections and/or representations made in respect of the provisional Tree Preservation Order (No.3) 2019.

Officer recommendation(s): To confirm without modification Tree Preservation Order (No.3) 2019.

Reasons for recommendations: It is considered that the pair of Deodar Cedar trees (T1 and T2 of the Order) are an important arboricultural feature and a defining element of this part of the South Downs National Park. The Council is under a duty to protect important trees where appropriate under Section 197 of the Town & Country Planning Act 1990.

Contact Officer(s): Name: Daniel Wynn
Post title: Specialist Advisor (Arboriculture)
E-mail: Daniel.wynn@lewes-eastbourne.gov.uk
Telephone number: 01273 085035

1 Introduction

- 1.1 Ditchling is located within the South Downs National Park (SDNP) which is administered by the SDNP Authority via its agents, which in this case is Lewes District Council. Please note the SDNP can decide to 'call in' or recover the case at any time and determine it themselves
- 1.2 In accordance with The Town and Country Planning Act 1990, if it appears to a local planning authority that it is expedient in the interests of amenity to make provision for the preservation of trees they may for that purpose make an order with respect to such trees as may be specified in the order
- 1.3 The Town and Country Planning (Tree Preservation)(England) Regulations 2012/605 provides for the procedure for making tree preservation orders. A tree preservation order comes into force on the date it is made, which in this case was 23 August 2019 and lapses after six months, unless it has been confirmed by the Local Planning Authority (LPA).

- 1.4 The 2012 regulations state that the LPA shall not confirm an order which they have made unless they have considered the objections and representations made, after which they may confirm with or without modification, or not confirm the order
- 1.5 The Order has been raised in response to a potential threat to the trees which came to light during a routine planning enquiry (ref SDNP/19/03277/DINPP). This triggered an assessment of the two trees and shortly after the above provisional Tree Preservation Order was imposed.

2 Site Description

- 2.1 The site is located at the northernmost end of Ditchling Village on eastern side of Common Road. The property forms part of a widely spaced set of detached dwellings on the eastern side of the road facing the open countryside to the west.
- 2.3 The residential side of Common Road is reasonably well populated with predominately, but not exclusively, ornamental type trees most of which appear to be of comparable age to the dwellings they grow near to. The opposite side of the road by contrast is simply open mixed arable fields with little in the way of tree cover

3 Representations

- 3.1 The Scheme of Delegations provide that The Director of Regeneration and Planning has delegated powers to deal with tree preservation orders except when objections to the making of the Order have been received then confirmation with or without modifications of the Order shall be referred to the Planning Applications Committee for determination
- 3.2 There have been one letter received from the tree owners of the property at 18 Common Lane. The reasons for objecting to the Order are reproduced verbatim as follows:

“My main objection is that I do not wish to be constrained by a TPO in the event that the trees become a Health and Safety issue or pose a threat to the property (physical or unsustainable and unreasonable financial maintenance burden). In terms of health and safety, apart from the air quality issue currently across the site (see photo of pollen in a puddle on the drive) and the occasional fallen unripe fruit the size and weight of a small hand grenade (I have a 5 year-old son), I worry about the proximity of the tree to my sons bedroom in the event of a storm. These are huge trees and I understand that several of this species blew down in this area in the great storm of '87 – some 30 years ago. The trees are a lot taller and wider now; they threaten not only No.18 but also No.16 Common Lane. Our neighbour said that last time the trees were pruned they produced some 8 tonnes of wood !

The second objection relates to the structure of our house as well as drainage. Our structural engineer has stated in 2 separate reports that:

“the two mature trees adjacent to the southern boundary need to be severely pollarded or trimmed so as to restrict their water demand”. We’re also struggling with the continuous stream of needles which fill gutters, block downpipes, block drains and unfortunately are probably responsible for the silting up of the soak-away in the front garden, which in turn is causing a drainage issue. I note that one of the branches is now almost touching my neighbour’s chimney (house actually built 2014, not 1920)”.

4 Information

- 4.1 The Committee’s principle consideration should relate to the visual ‘amenity’ value of the tree. Consideration should be given to the desirability of preserving or enhancing the character or appearance of the area and as agents acting on behalf of the SDNPA, to meeting the first of the twin purposes of the SDNP which is to “..conserve and enhance the natural beauty, wildlife and cultural heritage of the area.”
- 4.2 The size and height of trees, or the fear of it falling is not sufficient reason in its self to allow the lopping, topping or removal of important trees. Research by the centre for decision analysis and risk management (DARM) demonstrates that the overall risk to the public from falling trees is extremely low (about 1:10 million chance of an individual being seriously injured or worse) and broadly well within the Tolerability of Risk Framework (ToR). ToR is recognised internationally and by the UK’s Health & Safety Executive (HSE) as way of assessing, quantifying and managing risk
- 4.3 The deposition of leaves, seeds and general tree dander is a natural consequence of nature and is not considered to be a material consideration in this case. The clearance of fallen leaves (needles), flowers, pollen etc is considered to be a routine part of ordinary household and garden maintenance.
- 4.4 No evidence has been submitted to corroborate the claim that the trees are causing actual localised differential soil shrinkage or subsidence damage to nearby building structures. We will of course reconsider the situation in the light of any new information submitted in accordance with the requirements of an application to undertake works to the tree.
- 4.5 It is reasonable for the tree owner to expect permission to prune branches that are touching, or about to touch through incremental growth building structures. A tree work application submitted in the normal way will be assessed so as to consider whether or not the proposal is justified, having regard to the reasons put forward in support of it.

5 Material Considerations

- 5.1 It is considered that the trees both merit and qualify for a Tree Preservation Order.
- 5.2 It is considered that the protection of the trees meets the first of the SDNP’s twin purposes to conserve and enhance the natural beauty, wildlife and cultural heritage of the area.

- 5.3 The relative risks to people and/or property is regarded to be statistically so small as to be practicably negligible and as a consequence is not considered to be a material consideration in this case.
- 5.4 The shedding of leaves, seeds etc is not considered to be a material consideration and is instead is regarded as a consequence of the natural environment. The clearing of material such as fallen leaves is considered to be a routine part of ordinary household maintenance.
- 5.5 With regards claims concerning potential harm or damage to property the Council can reconsider its position in the light of any evidence put forward that would support claims of this nature.
- 5.6 In deciding whether a tree merits a TPO, the LPA's main consideration should be the amenity value of the tree. Even if the tree's amenity value may merit a TPO the authority can still decide that it would not be expedient to make one.

Likewise, in our capacity as agents acting on behalf of the SDNPA consideration should also be given to the first of the SDNP's twin purposes which is to "...conserve and enhance the natural beauty, wildlife and cultural heritage of the area."

'Amenity' is not defined in law, so authorities need to exercise judgment when deciding whether it is within their powers to make an Order. Orders should be used to protect selected trees and woodlands if their removal would have a significant negative impact on the local environment and its enjoyment by the public. Before authorities make or confirm a TPO they should be able to show that protection would bring a reasonable degree of public benefit in the present or future.

6 Summary

- 6.1 The relative visual amenity value of the tree is considered to outweigh the reasons given against the imposition of the Order and for this reason the imposition of the TPO is considered to be justified.

7 Financial appraisal

- 7.1 There are no financial implications for the SDNPA or LDC at this time.

8 Legal implications

- 8.1 Once a TPO is confirmed there is no right of appeal to the Secretary of State. However it is possible to apply to the High Court for a TPO to be quashed (section 284 and section 288, TCPA 1990). An application must be made within six weeks from the date of confirmation of the TPO. The challenge can only be made on a point of law, not on the merits of the decision.

9 Risk management implications

- 9.1 There are no identifiable risks to the South Downs National Park Authority or Lewes District Council at this time.

10 Equality analysis

- 10.1 An Equality Analysis is not constructive in this instance

11 Sustainability and/or carbon reduction implications

- 11.1 It is considered that there are no relevant sustainability implications in accordance with LDC Sustainability Policy (Dec 2018).

12 Appendices

- Appendix 1 – Photographs of the principle views
- Appendix 2 – Copy of TPO plan

13 Background papers

- 13.1 The background papers used in compiling this report were as follows:
- Planning Enquiry SDNP/19/03277/DINPP
 - Tree Preservation Order (No.3) 2019 – [file ref: 3825:0599]
 - Amenity Assessment (file 3825:0599)

Appendix 1 – View from public highway (18 Common Lane, Ditchling).



View from the South looking North (16 Common Lane in the foreground)



Appendix 2 – Copy of the Tree Preservation Order plan

